



OFFICE OF
INSURANCE COMMISSIONER
TECHNICAL ASSISTANCE ADVISORY
T 06-01

TO: Vehicle Service Contract Providers, Auto Manufacturers

SUBJECT: Motor Vehicle Service Contracts

DATE: July 26, 2006

During the 2006 Legislative Session the Washington State Legislature passed SHB 2553 (Chapter 274, Laws of 2006) which makes major revisions to the motor vehicle service contract statutes. The Act repeals Chapter 48.96 RCW (the current motor vehicle service contract law) and puts the law as to motor vehicle service contracts in Chapter 48.110 RCW (the existing service contract law).

The major change is that vehicle service contract providers must register with the Insurance Commissioner. Also, as a result of the new law the Commissioner's current process for reviewing vehicle service contracts must change. This TAA provides guidance on complying with the changes.

What is the effective date of the change?

The new law applies to any motor vehicle service contract sold or issued to a Washington resident on or after October 1, 2006.

To what motor vehicle service contracts does the new law apply?

The law applies to any motor vehicle service contract sold or issued to a resident of the State of Washington regardless of:

- Where the seller, motor vehicle service contract provider, or anyone else involved in the transaction is located; or
- The method the motor vehicle service contract is sold to the Washington resident.

This means, for example, that if a Washington resident buys a motor vehicle service contract on the internet, the motor vehicle service contract provider, seller and the contract must comply with the new law.

Do the changes to the motor vehicle service contract law apply to other forms of transportation such as boats and snow mobiles?

Generally, no. The law applies to service contracts on motor vehicles that are licensed under Chapter 46.16 RCW. "Motor vehicle" is defined in that Chapter as motor vehicles driven on public highways. Hence, items such as snowmobiles, boats, and personal watercraft which are

not driven on public highways are not motor vehicles for the purposes of the service contract law and the motor vehicle provisions of chapter 48.110 RCW do not apply to them. The remainder of chapter 48.110 RCW does apply to service contracts on these crafts.

If I am an auto manufacturer or import distributor of autos am I exempted from the new law?

No. You must register with the Insurance Commissioner, but less information is required. You are exempt from the requirement to have a reimbursement insurance policy for autos that you manufacture or import.

If I am an auto manufacturer or import distributor of autos, but I am selling motor vehicle service contracts on autos that I do not manufacture or import, am I exempt from the new law?

No. If you do not manufacture or import a vehicle, all of the provisions (including the requirement for a reimbursement insurance policy) of the law apply to vehicle service contracts that you sell on those vehicles.

If I am a subsidiary or other affiliate of an auto manufacturer or import distributor am I exempted from the new law?

No. You must register with the Insurance Commissioner and you are required to have a reimbursement insurance policy. Wholly owned subsidiaries of an auto manufacturer or import distributor will be asked for less information to register. If you are an affiliate not a **wholly owned subsidiary** of an auto manufacturer or import distributor, then the entire law applies to you.

Registration of a motor vehicle service contract provider

The motor vehicle service contract provider (obligor on the contract) must be registered with the Insurance Commissioner as a service contract provider; otherwise the sale of the contract is illegal.

If I am an auto manufacturer or import distributor of autos must I be registered?

Yes.

What if I am a subsidiary or other affiliate of an auto manufacturer or import distributor, must I be registered?

Yes.

How may I get registered as a service contract provider?

The application form and instructions for registering are on the Commissioner's website at: http://www.insurance.wa.gov/industry/authorized_companies/application_packets/ServiceContractProviderApplication.doc

You may also contact Kris Graap in the Insurance Commissioner's Company Supervision Division at (360) 725-7206, or by email at Krisg@oic.wa.gov to obtain the application material.

You may also contact the Company Supervision Division at (360) 725-7200 to obtain the application.

How long does it take to get registered?

Generally, the initial review of the application is completed within 30 days after it is received. However, if the application is not complete and does not include all of the required material, then the registration process will be delayed.

What is the deadline to send in my application for a registration date of October 1, 2006?

You should send your registration in as soon as possible. Earlier submission will give you time to register and file your motor vehicle service contract forms for approval prior to the October 1, 2006 effective date of the law.

May I obtain an expedited review of my application?

Applications are reviewed on a first come, first served basis.

May I continue to sell motor vehicle service contracts on or after October 1, 2006 if the motor vehicle service contract provider is not registered?

No. This is an illegal sale of insurance and will subject everyone involved in the sale and issuance of the contract (except the consumer) to the penalties in the Insurance Code.

What are the possible penalties if I sell a motor vehicle service contract on or after October 1, 2006 and the motor vehicle service contract provider on the contract is not registered?

The possible fine is up to \$25,000 for each violation. Violators of the law may be charged with commission of a class B felony punishable under chapter 9A.20 RCW. You may be held personally liable on the contract. In addition, if you are a licensed insurance agent or broker, you are subject to suspension or revocation of your insurance agent or broker license.

Filing of Motor Vehicle Service Contract Forms

Do I have to file my motor vehicle service contract forms with the Commissioner for approval?

Yes, although the timing of when the forms must be filed depends upon the nature of the motor vehicle service contract provider. If the motor vehicle service contract provider is a motor vehicle manufacturer or import distributor or a wholly owned subsidiary, then the motor vehicle service contract forms must be filed with the Commissioner within 60 days after they are first used. For all other motor vehicle service contractor forms, motor vehicle service contract forms must be filed with and approved by the Commissioner prior to their use.

How do I file a motor vehicle service contract form with the Commissioner for approval?

The filing instructions are on the Commissioner's website at:
<http://www.insurance.wa.gov/industry/MotorVehicleServiceContracts.asp>

When may I file my motor vehicle service contract forms with the Commissioner for approval?

You may file your motor service contract forms anytime after you have received your registration from the Commissioner as a service contract provider.

Do I need to complete the form filing checklist?

Yes, if you want your service contract reviewed in a timely manner. It is very likely that providers subject to prior approval of contracts will not have a legal product to market on October 1, 2006 if a completed checklist is not sent in. For filers subject to use and file, failure to complete the checklist increases the likelihood that the products they sell will have illegal provisions, and the penalties for selling products with illegal provisions are severe.

May I file a form for approval with the Commissioner under the current law, Chapter 48.96 RCW, prior to its repeal on October 1, 2006?

No. The Commissioner is no longer accepting motor vehicle service contract forms for approval under Chapter 48.96 RCW. Any new vehicle service contract form filings must comply with the new law. Vehicle service contract forms that comply with the new law must also meet the requirements of Chapter 48.96 RCW.

If I have already filed forms with the Commissioner that have been approved, are those forms grandfathered, i.e. may I continue to sell them?

No. The new law includes significant changes to required provisions that must be included in a vehicle service contract. It is very unlikely that your forms already include these provisions and comply with the new law.

What are the main differences in the new vehicle service contract forms?

The contracts must be clear and unambiguous. Under Washington law, an “ambiguity” exists in a contract if the language on its face is fairly susceptible to two different but reasonable interpretations.¹ This is the standard we will use when evaluating vehicle service contracts. Based on past experience with vehicle service contracts, many service contracts currently being sold do not meet this standard.

Repeated problems of ambiguous contract language include, for example, unclear identification of the vehicle service contract provider. You may not identify the provider by referring to it as the “administrator” or the “dealer” identified in another portion of the contract or state that the provider is “whomever state law requires.”

The contract must state the contract price and the terms under which the contract is sold. You are not required to preprint the price on the form as long as there is a place on the contract to enter the price before the contract is delivered to the consumer.

Cancellation requirements have changed. In addition to the current requirements, if a contract is cancelled more than 30 days after its purchase, the provider must refund the purchase price pro rata based upon either the elapsed or mileage computed from the date and mileage when the contract was purchased. The provider may keep a cancellation fee of up to \$25. A so called “in service date” may no longer be used to compute the refund upon cancellation.

¹ Allstate Insurance Company v. Peasley, 131 Wn.2d 420; 932 P.2d 1244 (1997).

Additional new mandatory provisions:

- The contract must state the process to get service or file a claim, including the procedures to obtain prior approval, a toll free telephone number to get prior approval and how to get emergency repairs after normal business hours.
- The contract must state the deductible amount (if a deductible applies).
- The contract must state any restrictions governing transfer of the contract.
- The contract must state whether it excludes consequential damages or preexisting conditions.
- The contract may not require that a civil action under the contract be brought outside of the State of Washington.
- If the service contract contains an arbitration provision, arbitration proceeding must be held at a location close to the consumer's permanent residence.

Other major changes in the new law

How did the financial responsibility requirements change?

In order to meet the financial responsibility requirement under the new law, the contract must be wholly insured (not partially insured or only insured in the event of default by the provider) by either an insurance company holding a certificate of authority from the Commissioner or a Risk Retention Group properly registered with the Commissioner. Both must have and keep policyholder surplus and paid-in capital of at least \$15,000,000 (or \$10,000,000 if certain other conditions or met).

May I continue to “claims underwrite”?

No. The new law allows the motor vehicle service contract provider 60 days after the sale of the contract to determine whether the vehicle qualifies for the particular vehicle service contract program. After 60 days, the provider is bound by the contract and cannot deny claims or cancel the contract based on the vehicle make or model.

May I deny a claim if the consumer does not properly maintain the vehicle and the failure to maintain the vehicle did not involve the failed part or parts?

No.

Who is responsible to refund the full purchase price to the contract holder in the event of cancellation?

The new law says that it is the vehicle service contract provider must refund the entire amount owed to the consumer upon cancellation. The vehicle service contract provider may not refund only the portion it received.